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12
13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 FRESNO DIVISION
16

17 SEQUOIA FORESTKEEPER and EARTH
18 ISLAND INSTITUTE,

19 Plaintiffs,

20 v.

21 UNITED STATES FOREST SERVICE,

22 Defendant.
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28

No.: 1:21-CV-01041-DAD-BAM

**DECLARATION OF ARA
MARDEROSIAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 I, Ara Marderosian, declare as follows.

2 1. I submit this declaration in support of the Plaintiffs' Motion for Preliminary
3 Injunction in this case, submitted herewith. I have personal knowledge of the matters stated
4 herein and, if called as a witness, would and could competently testify thereto.

5 2. I am a resident of Weldon, California and have been involved in monitoring forest
6 management on the Sequoia National Forest for 25 years. In 2001, I founded a conservation
7 organization, Sequoia ForestKeeper ("SFK"), and have been a member for 21 years.

8 3. SFK's mission is to protect and restore the ecosystems of the Southern Sierra
9 Nevada including, but not limited to, the Giant Sequoia National Monument, Sequoia National
10 Forest and Mountain Home State Forest through monitoring, enforcement, education, and
11 litigation. Sequoia ForestKeeper's members, including myself, many of whom reside in local
12 areas including Kern, Tulare, and Kings Counties, and others who visit from across the country,
13 use the forests of the Southern Sierra Nevada for activities such as hiking, bird and animal
14 watching, aesthetic enjoyment, quiet contemplation, fishing, photography, scientific study, and
15 biological health. Many of its members, including myself, also have been actively involved in
16 formulating management policies for public lands and preserving local areas including
17 participating in the establishment and development of the Giant Sequoia National Monument.

18 4. I am also the Executive Director of SFK. My responsibilities at SFK include
19 acquiring and managing the finances of the SFK, a tax exempt California public education
20 corporation, carrying out the mission of SFK, evaluating projects proposed by the Forest Service
21 for implementation in Sequoia National Forest and the Giant Sequoia National Monument,
22 submitting comments and suggestions on those proposals to the agency, appealing decisions that
23 fail to adequately consider the impacts to the environment or follow the relevant laws and
24 regulations, and when all else fails, finding an attorney to file a complaint when our appeals or
25 the laws are ignored.

26 5. In order to carry out these responsibilities, I rely on the Forest Service to provide
27 sufficient notice of a proposed project so that I can submit comments on behalf of Sequoia
28 ForestKeeper and its members. Furthermore, when the Forest Service issues decisions, I also

1 rely on the law to provide us with an opportunity to administratively appeal those decisions when
2 we believe the decision-maker has failed to follow the law. Occasionally, this administrative
3 appeal process results in improving the analysis of a project, increasing the protections to
4 resources in the project area, or the process simply halts the project altogether.

5 6. In the past, neither I nor our members have been given proper notice to comment
6 on proposed actions that implement the Sequoia Land and Resources Management Plan or Giant
7 Sequoia National Monument Plan (or forest plan). Furthermore, when projects are categorically-
8 excluded from analysis in an Environmental Assessment (“EA”) or Environmental Impact
9 Statement (“EIS”), neither I nor our other members have been allowed to administratively appeal
10 those projects. That is also the case for the project that is the subject of this litigation.

11 7. Neither I nor our members were notified of the Plateau Road HT Project until
12 after the Forest Service provided us with their final decision in the form of a “NEPA Checklist.”

13 8. Sequoia ForestKeeper and its members, including myself, have and are being
14 harmed by this failure to provide notice and comment on the project, which has the effect of
15 causing actual environmental harms.

16 9. SFK and its members, including myself, will be harmed by the Forest Service’s
17 implementation of the roadside and recreation site logging projects in the Sequoia National
18 Forest and will be harmed by the effects from those actions on climate, various wildlife species,
19 which we monitor and are trying to protect. These species include resident Pacific fishers,
20 California spotted owls, northern goshawks, and mountain yellow-legged frogs (MYLF).

21 10. Moreover, SFK and its members, including me, will be harmed by the loss of old-
22 growth forest and our ability to observe wildlife, including California spotted owls, northern
23 goshawks, Pacific fishers, and MYLF from the various logging and vegetation management
24 activities after the fire.

25 11. I have reviewed the limited set of relevant documents associated with the case.

26 12. On 19 February 2021, in a request to the Acting Secretary of the U.S. Dept. of
27 Agriculture, we described this project and asked the administration to withdraw it, stating: “The
28 Sequoia National Forest’s Plateau Roads Hazard Tree project, finalized June 6, 2020, used a CE

1 to authorize 2,193 acres of commercial logging of large trees up to 200 feet from 45 miles of
2 road, in habitat for the endangered Pacific fisher. Use of the CE precluded public input and
3 consideration of alternatives, including the alternative of noncommercial felling of legitimate
4 hazard trees. The Decision Memo should be withdrawn. If the agency wants to move forward, it
5 should start over with an EA and appropriate public input.” *See*
6 http://www.sequoiaforestrykeeper.org/pdfs/signon_letters/20210219_Letter_re_EO_13990.pdf.

7 13. I have been visiting the Kern Plateau area where the project is located dozens of
8 times over the last 25 years for recreation and to monitor resources and Forest Service activities.
9 Those visits always start with the Sherman Pass Road, and I have been on each of the side roads
10 in the project area several times, including 22S21, 22S26, the Bonita Meadows Road, and many
11 other side roads that access more remote areas on the Kern Plateaus.

12 14. Most recently, I visited the Kern Plateau with SFK’s Programs Director, Alison
13 Sheehey, on 20 May 2021 to survey for trees marked for logging in the Plateau Roadside Hazard
14 Tree Project.

15 15. During our visit, I was able to identify many living trees, marked for removal,
16 including white fir, red fir, Jeffrey pine, and lodgepole pine.

17 16. I saw trees that I thought could not possibly fall on the road, including true
18 hazards, because they were too far from the road.

19 17. While hiking through and monitoring the project area, I have observed mature
20 stands of old growth trees and pockets of large down woody material both of which are
21 indicators of suitable Pacific fisher habitat, as well as habitat for the California spotted owl and
22 northern goshawk. Furthermore, I have observed the streams, meadows, and seeps in the area,
23 which provide habitat for the endangered mountain yellow-legged frog (MYLF). All of these
24 project areas provide habitat for a large range of native species, which I and our members try to
25 observe, and the logging activities proposed in the project will diminish our ability to make these
26 observations.

27 18. Logging projects have historically caused a disruption of my recreational
28 activities through the logged areas because the forest is no longer reflective of the natural forest

1 characteristics. The Plateau Roads Project will harm my recreational interests in observing intact
2 forests and associated wildlife. The Forest Service has allowed the logging activities to start in
3 June, which will harm my future ability to view the wildlife species that I am trying to protect in
4 the Sequoia National Forest. I enjoy recreating in forests that have not been logged, and logging
5 will ruin my enjoyment of the area.

6 19. I plan to visit project area again in July and again in August.

7 20. I believe that, if the Forest Service were to follow the law, the agency would
8 prepare an EA or EIS as required by NEPA, and analyze whether there are significant effects on
9 the climate and carbon storage, on the SSN Fisher and other sensitive wildlife species, and on my
10 ability to view and study these wildlife species. Moreover, if the Forest Service were to properly
11 analyze the environmental effects on climate, carbon storage, and wildlife species, they would
12 consider alternatives, such as leaving most of trees proposed for logging and not felling or
13 removing them, and closing roads that are not needed for access in order to protect habitat.
14 Moreover, they would revise the projects so they will result in greater mitigation of adverse
15 effects to wildlife while still providing for carbon storage and public safety.

16 21. I believe that a favorable court decision finding that the Forest Service failed to
17 comply with the National Environmental Policy Act, and issuing an injunction against the
18 agencies would redress the injuries I have described.

19 Attorney Assistance and SFK's Inability to Post More than a Nominal Bond

20 22. After asking for help from local attorneys, we have discovered that there are no
21 attorneys in our area, including in the Fresno and Bakersfield legal communities, with the
22 necessary expertise to prosecute National Environmental Policy Act, National Forest
23 Management Act, and Administrative Procedure Act cases focused on national forest
24 management, and so we must rely on attorneys in the San Francisco Bay Area or attorneys in
25 other states, with the necessary specialized legal skills and experience to effectively bring SFK's
26 cases against the U.S. Forest Service.

27 23. As Executive Director of SFK, I can report on our ability to post a bond for a
28 Preliminary Injunction or Temporary Restraining Order. At this time SFK has \$15,000 for 2021

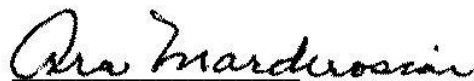
1 for the entire road and recreation site legal challenge, which has already been allocated to pay
2 our attorneys. We have nominal funds for litigation expenses, and all of those have also been
3 allocated. The rest of our funds are restricted to purposes unrelated to this litigation. Given such
4 restricted donor intent, SFK cannot legally use these funds for expenses, fees, or bonds related to
5 this litigation. Such unauthorized use of restricted funds would leave SFK open to potential
6 liability with respect to our donors, and would almost certainly result in the loss of funding.
7 Because our organization has a relatively small amount of unrestricted money, any lapse in
8 funding, or any contingency (such as imposition of even a nominal bond in this case) would be
9 devastating to our continued viability. SFK would be deterred from continuing its work to
10 protect the Sequoia National Forest and Giant Sequoia National Monument or work in public
11 interest.

12 24. Unlike for-profit businesses, which can with some degree of accuracy and
13 confidence estimate the following year's revenue, small non-profit groups like SFK cannot do
14 this. This is because the charitable foundations, which are the main source of our grants,
15 frequently change funding direction and key staff contacts or competition for grant funding
16 becomes more severe. We spend what we receive, and what we receive is almost always
17 allocated to a specific purpose. There is no guarantee from year to year whether SFK will
18 continue to be funded by past grantors, and this is true for our litigation activities as well.

19 25. In fact, we simply do not have money available to pay more than a nominal bond
20 (up to \$100) in this case.

21
22 I declare, under penalty of perjury, that the foregoing is true and correct to the best of my
23 knowledge and recollection.

24 Executed on June 28, 2021 in Weldon, California.

25 
26 Ara Marderosian